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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. SHANNON CURTIS WRIGHT, Defendant and Appellant.	F055853 (Super. Ct. No. 1237222) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Stanislaus County. Donald E. Shaver, Judge.

Grace L. Suarez, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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[*]Before Vartabedian, Acting P.J., Wiseman, J., and Cornell, J.

On November 28, 2007, appellant Shannon Curtis Wright, pursuant to a plea agreement, pled guilty to unlawful taking or driving a motor vehicle (Veh. Code, § 10851, subd. (a)), and admitted allegations that he had suffered a prior conviction of that offense (Pen. Code, § 666.5)[1] and that he had served two separate prison terms for prior felony convictions (§ 667.5, subd. (b)). Immediately thereafter, appellant waived referral to the probation department for investigation and preparation of a presentence report (§ 1203, subd. (b)), and agreed to immediate sentencing.

At that point, the court imposed a prison term of five years, consisting of the three-year midterm on the substantive offense and one year on each of the two prior prison term enhancements, and awarded appellant presentence custody credit of 19 days, consisting of 13 days of actual time credit and six days of conduct credit; the parties stipulated that appellant was in imminent danger of becoming addicted, or was currently addicted, to the use of narcotics; the parties waived the filing of a petition pursuant to Welfare and Institutions Code section 3051; and the court suspended criminal proceedings and ordered appellant committed to the California Rehabilitation Center (CRC).

On May 2, 2008, CRC notified the trial court by letter that it had "reviewed [appellant] for suitability" and concluded that appellant was "not suitable ...."

On June 23, 2008, appellant filed a notice of motion for withdrawal of his guilty plea. In his supporting memorandum of points and authorities, he asserted that the "expectation of the [plea agreement] was for him to go to CRC" but he was "rejected from CRC because he was on ... parole."

On July 14, 2008, the court denied the motion.

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[1] Except as otherwise indicated, all statutory references are to the Penal Code.

On July 16, 2008, the court reinstated criminal proceedings; again imposed the five-year term that had been previously imposed; and awarded appellant presentence custody credit of 369 days, consisting of 247 days of actual time credit and 122 days of conduct credit.

Initially, when appellant filed his notice of appeal, he failed to request a certificate of probable cause (§ 1237.5). Subsequently, after appellate counsel was appointed, this court granted appellant's request for permission to seek a certificate of probable cause in the trial court. Thereafter, appellant made such a request, and on February 3, 2009, the trial court denied it. On March 30, 2009, appellant filed a petition for writ of mandate in this court, in the case of *Wright v. Superior Court*, case No. F057294, challenging the trial court's ruling.[2] On July 30, 2009, this court denied the petition.

Appellant's appointed appellate counsel has filed an opening brief which summarizes the pertinent facts, with citations to the record, raises no issues, and asks that this court independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Although appellant has not responded to this court's invitation to submit additional briefing, as we discuss below, we will deem raised, without additional briefing, the contention that appellant is entitled to additional conduct credit under a 2010 amendment to section 4019. We will affirm.

DISCUSSION[3]

Under section 2900.5, a person sentenced to state prison for criminal conduct is entitled to credit against the term of imprisonment for all days spent in custody before

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[2] We take judicial notice of this court's record in that case. (Evid. Code, §§ 452, subd. (d), 459.)

[3] We do not summarize the facts of the instant offense because, as indicated above, the probation officer did not prepare a presentence report, and the facts of the instant offense do not appear elsewhere in the record.

sentencing. (§ 2900.5, subd. (a).) In addition, section 4019 provides that a criminal defendant may earn additional presentence credit against his or her sentence for willingness to perform assigned labor (§ 4019, subd. (b)) and compliance with rules and regulations (§ 4019, subd. (c)). These latter two forms of presentence credit are called, collectively, conduct credit. (*People v. Dieck* (2009) 46 Cal.4th 934, 939, fn. 3.)

The court sentenced appellant in July 2008, and calculated appellant's conduct credit in accord with the version section 4019 then in effect, which provided that conduct credit could be accrued at the rate of two days for every four days of actual presentence custody. (Former § 4019.) However, the Legislature amended section 4019 effective January 25, 2010, to provide that any person who is not required to register as a sex offender and is not being committed to prison for, or has not suffered a prior conviction of, a serious felony as defined in section 1192.7 or a violent felony as defined in section 667.5, subdivision (c), may accrue conduct credit at the rate of four days for every four days of presentence custody.

Appellant is eligible for conduct credit under the 2010 amendment to section 4019 only if the statute is given retroactive application.[4] This court, in its "Order Regarding Penal Code section 4019 Amendment Supplemental Briefing" of February 11, 2010, ordered that in pending appeals in which the appellant is arguably entitled to the benefit of the more generous conduct credit accrual provisions of the 2010 amendment to section 4019, we would deem raised, without additional briefing, the contention that prospective-only application of the amendment is contrary to the intent of the Legislature and violates equal protection principles. We deem these contentions raised here.

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[4] We assume without deciding that appellant is not required to register as a sex offender and has not suffered a prior conviction of a serious or violent felony.

As we explained in the recent case of *People v. Rodriguez* (March 1, 2010, F057533) __ Cal.App.4th __ [pp. 5-12]), the 2010 amendment does not operate retroactively and does not violate the constitutional guarantee of equal protection of the laws. Appellant is, therefore, not entitled to additional conduct credit under that amendment.

Following independent review of the record, we have concluded that no other reasonably arguable legal or factual issues exist.

DISPOSITION

The judgment is affirmed.